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In re Application of :
Oliver Morgan, et al. : DECISION ON PETITION
Application No. 10/013,097 : UNDER 37 CFR 1.78(a)(6)
Filed: December 6, 2001 :
Attorney Docket No. A00023(2)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 17, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional Application No. 60/254,039, filed December 7, 2000.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR § 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition under 37 CFR § 1.78(a)(6) must be accompanied by:

- (1) the reference to the prior filed provisional application supplied in an application data sheet (ADS) (37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(iii);
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1). Accordingly, before the petition can be granted, petitioner must submit the reference to the prior-filed application in either an amendment to the first line of the specification or in an Application Data Sheet (ADS). The amendment or ADS should be accompanied by a "Renewed Petition under 37 CFR 1.78(a)(6).

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this decision on petition may be directed to Retta Williams at (571) 272-3229.



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